

T. S. No. 51 of 2021  
CNR No. WBSP17-000291-2021  
( J.O. Code-WB0962 )

Order no. 11 dated 20-05-2022

Today is fixed for acceptance of written statement and hearing the petition filed by the defendant no. 1. for permission to complete incomplete construction over the suit property.

Learned advocate for both the parties filed their respective haziras.

Plaintiff files petition supported by an affidavit for extension of ad interim injunction and also files written objection against the petition filed by defendant no. 1 for permission to complete incomplete construction over the suit property.

Let the same be kept with the record.

On consent of both the parties W/S filed by the defendant no. 1 is hereby accepted.

It also appears from the record that the plaintiff has filed a petition dated 21.04.2022 for mandatory injunction.

On consent of both the sides, both the petition dated 24.12.201 filed by the defendant no. 1 and petition dated 21.04.22 filed by the plaintiff is taken up for hearing together.

Heard both the sides in full.

It is the contention of the defendant no. 1 that before the institution of this suit the construction was going on by the defendant no. 1 over the suit property and the plaintiff by suppressing the said fact filed this suit and obtained an order of ad interim injunction. Therefore, necessary permission may be given to the defendant no.1 to complete the incomplete construction over the suit property.

On the contrary learned advocate for the plaintiff submitted that there is a incomplete construction over the suit property, which is made by the defendant no. 1 without obtaining any permission from the concerned authority and as such, he prays for passing an order for mandatory injunction for demolishing the illegal construction made by the defendant no. 1 over the suit property.

It is an admitted position that the suit property is a joint, un-demarcated and undivided property. There has been no partition between the parties by metes and bounds. There is no document on record to show the exclusive possession of either of the parties to the suit over the suit property. In such circumstances, it would not be wise and proper to give any permission either to defendant no. 1 to complete his incomplete construction or to the plaintiff granting him mandatory injunction for demolishing the existing structure made by the defendant no. 1 over the suit property. Both the petitions are premature

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and not maintainable at this stage since there is no evidence and/or papers of exclusive possession of either of the parties over the suit property and the same cannot be ascertained without full trial and appreciation of evidence. In such circumstances, I am inclined to reject both the applications on contest without any costs. However, both the parties are at liberty to file appropriate petition at appropriate stage for consideration regarding their respective claims.

Ad interim injunction is extended till the date fixed.

To 27.06.2022 for hearing injunction application and SR/AD.

Plaintiff is directed to take necessary steps.

Dictated and corrected by me:

Sd/-

[Civil Judge, (Sr. Divn.), Kakdwip]

Sd/-

[Civil Judge, (Sr. Divn.), Kakdwip]